

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 532 of 1994

with

CIVIL REVISION APPLICATION No 533 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHADEVBHAI JESANGBHAI MORI

Versus

LEENABEN SARABHAI

Appearance:

1. Civil Revision Application No. 532 of 1994
MR MC BHATT for Petitioner
MR Amar Bhatt for Respondent No. 1 to 6
UNSERVED AS EXPIRED for Respondent No. 3
2. Civil Revision Application No 533 of 1994
MR MC BHATT for Petitioner
MR Amar Bhatt for Respondent No. 1 to 6

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 11/09/97

ORAL JUDGEMENT

1. The petitioners-original defendant Nos 1 & 2 are aggrieved by the order passed by the City Civil Court in Civil Suit No.4585/89. Civil Suit No.4585/89 was filed by the plaintiff. It appears that the present petitioner No.1-Mahadev bhai Jesangbhai Mori gave an application at Exh.42 in the City Civil Court in Civil Suit No.4585/89 under section 10 of C.P.Code for stay of the said suit till the previously instituted HRP Suit No.1437/89 in the court of Small Causes at Ahmedabad is decided. It was stated by him in the application that in the suit instituted in the City Civil Court issues were framed at Exh.40 and issue No.5 raised therein was with respect to the question as to the defendant in the suit namely Mahadev Jesangbhai Mori was the tenant of the suit premises or not. He also stated that before the institution of the suit by respondent-plaintiff Nos 1 to 5 the suit was already instituted in the court of Small Causes in HRP Suit No.1437/89 and therefore looking to the pleadings of the two suits further hearing of Civil Suit No.4585/89 instituted in the City Civil Court was required to be stayed under section 10 of C.P.Code till HRP Suit No.1437/89 is decided. For the perusal of the court plaints of both the suits are produced and the court has thereupon passed the order below Exh.42. The Ld.City Civil Judge vide order dated 17.1.1994 dismissed the application on the ground that the HRP Suit which was filed was under the provisions of Bombay Rent Lodging House Rates Control Act, 1947 on the supposition that the defendant therein was tenant while the suit which was filed in the City Civil Court was the suit for decree of eviction against the trespasser by taking recourse to due process of law. The court therefore found that if the plaintiffs before the City Civil Court succeed in establishing that the defendant was a trespasser he will get the decree. The court also found that the defendant No.2--Harish Ishwarlal Pandya inducted Mahadev bhai Jesangbhai Mori unauthorisedly in the suit property while the defendants contended that the defendant No.1 occupied the rented property under bonafide belief that the defendant No.2 had the authority to put him in possession. IN view of this, the Ld.City Civil Judge dismissed the application for stay of proceedings. Mr.Amar Bhatt who appears for the respondent-original plaintiffs has stated before this court that the HRP Suit which was filed in the court of Small Causes is already withdrawn and therefore the only suit which is now required to be proceeded with is suit filed in the City Civil Court being Civil Suit No.4585/89. In view of the

aforesaid development the present CRA has become infructuous and same is disposed of as infructuous. Rule is discharged. Ad interim relief in terms of para 4B granted earlier is hereby vacated and the City Civil Court at Ahmedabad is directed to proceed further with the Civil Suit No.4585/89. DS permitted. Office is directed to send the writ of this order to the City Civil Court, Ahmedabad forthwith.